IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3636 of 1990

RAM SINGH
V/S
B O R

Mr. VIJAY BISHNOI, for the appellant / petitioner

Mr. BL BHATI, DY.GA, for the respondent
Nobody appears for the contesting private respondents.

Date of Order : 6.11.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this writ petition, the petitioner seeks to challenge the order of the Board of Revenue Annexure-3 dt. 17.7.89, whereby while upholding the judgments of the two learned courts below, dismissing the plaintiff private respondent's suit for declaration of Khatedari rights, has set aside the order of the two learned courts below decreeing the petitioner's counter claim, whereby the decree for dispossession of the present private respondent was passed, on the ground, that in view of the Division Bench judgment of this Court, such person could be evicted only under Section 180(b), and not under Section 183 of the Rajasthan Tenancy Act, and since both the learned courts below have not discussed the matter as to whether in the defendant's counter claim the facts pleaded a case for eviction under Section 180(b) is made out, or not.

Facts of the case are, that on 13.11.78 the plaintiff respondents filed the suit for declaration about the plaintiffs having acquired Khatedari rights on the land in question, pleading interalia, that they were inducted as sub tenant by the defendant (present petitioner), in the year Samvat 2008, and since then he is continuing in possession, and cultivating the land. However, since the defendant has clandestinely got entries in the revenue record made in his favour, showing him to be Khatedar, which could not come to the notice of the plaintiff, while since at the time of commencement of Rajasthan Tenancy Act he was there in possession as sub tenant, he acquired Khatedari rights, and a declaration was prayed for. To this the defendant contested the suit, and filed the counter claim, praying, that the plaintiff was not inducted as sub tenant in Samvat 2008, nor he was in possession in the year 2012, nor did the plaintiff got his rights declared within the time permissible under the law. It was pleaded, that as a matter of fact the plaintiff was inducted as sub tenant on Rs. 40/- per year in Samvat 2017, and now since he has become trespasser, a suit has already been filed against him by the defendant on 13.4.79, under Section 180(b), and Section 183 of the Rajasthan Tenancy Act, and therefore, the plaintiff is not entitled for any declaration. It was also prayed that the plaintiff is liable to be evicted under Section 180(b) read with Section 183, and to that

effect counter claim was also filed. Learned trial court entertained the counter claim, and the suit filed by the petitioner was also consolidated with the suit of the present plaintiff.

After completing the trial, the learned trial court decided issues no. 1 and 4 in the manner, that deciding issue no.1 it was found, that the plaintiff has failed to establish to have acquired Khatedari rights, by interalia finding, that the plaintiff was inducted in 2017 only, and not prior to that. Likewise, issue no. 4 was also decided in the manner, that since the defendant was inducted as sub-tenant, and since the defendant wanted to dispossess the petitioner, and filed a suit on 13.4.79, while the plaintiff has denied the title of the defendant, which he could not, by virtue of Section 116 and 111 'G' of the Transfer of Property Act, therefore, issue no. 4 was decided in favour of the plaintiff, and decree for ejectment was passed. It may be observed that issue no. 4 is, as to whether the plaintiff was inducted as sub-tenant @ Rs. 40/- per year 2017, and now his status has become that of trespasser, and is liable to be ejected under Section 180(b) and Section 183 of the Rajasthan Tenancy Act. This judgment and decree was upheld by the learned Revenue Appellate Authority, and the two judgments have been interferred with by the learned Board of Revenue as noticed above.

I have heard learned counsel for the petitioner. Nobody appeared on behalf of the contesting private respondents.

Arguing the writ petition it is contended, that it has consistently been held by this Court in the judgments of Jodha Vs. Board of Revenue reported in RRD 1979-160, and Balveer Singh Vs. Board of Revenue reported in 1983 WLN (UC)-476, that in such cases where the person is inducted as sub tenant after his sub tenancy comes to an end, and he continues to be in possession as tenant holding over, he can be ejected only under Section 180(b), and not under Section 183, and from a look at the plaint filed by the petitioner on 13.4.79, copy whereof has been produced as Annexure-1, it is clear, that therein the petitioner had clearly pleaded that the present private respondent had continued in possession from year to year as tenant holding over. However, it is only on account of their act of filing this present suit on 13.11.78, for declaration of Khatedari rights, that their status stood converted into that of trespasser, and on the petitioner's request they declined to deliver the possession, and therefore, the suit was filed. In these circumstances requirements of Section 180 (b) are also clearly there on the record, and on this aspect also, there was no controversy ever joined by the present private respondent, and therefore, learned Board of

Revenue was in error in setting aside the order of ejectment passed by the learned two courts below.

I have considered the submissions, and have gone through the judgments. I find force in the submission of the learned counsel for the petitioner. From a look at Annexure-1 it is clear that the present petitioner had clearly filed the suit for ejectment under Section 180(b). However, in view of the conduct of the present private respondents having filed the present suit the plea was also taken about their status having been converted into that of a trespasser, none the less the petitioner had clearly come with a case of ejectment under Section 180(b), and as held by this Court in the judgments rendered in the cases of Jodha and Balveer, that such a person is liable to ejectment under Section 180(b), I do not find this part of the order of the learned Board of Revenue to be sustainable.

The net result is that the writ petition is allowed. The impugned order of the learned Board of Revenue Annexure-3 setting aside the judgments and decree of the learned courts below is set aside, and the order passed by the learned R.A.A. is restored.

(N P GUPTA),J.

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